

DEC 16 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

SHAGEN MOOUSAELIAN,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 02-71983

Agency No. A72-774-978

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted December 4, 2003
Pasadena, California

Before: PREGERSON, COWEN,** and W. FLETCHER, Circuit Judges.

Petitioner Shagen Moousaelian contends that translation difficulties at his
hearings before the immigration judge deprived him of a full and fair hearing on

* This disposition is not appropriate for publication and may not be cited to or by
the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Robert E. Cowen, Senior United States Circuit Judge for
the Third Circuit, sitting by designation.

his claims for asylum and withholding of deportation. The fact that his hearings were conducted in Armenian rather than Russian does not appear to have violated Mr. Moousaelian's right to due process. However, a review of the record reveals significant circumstantial evidence of incompetent translation. *See Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000). The translation difficulties at the hearing before the immigration judge resulted in an inadequate and confusing record. *See He v. Ashcroft*, 328 F.3d 593, 598 (9th Cir. 2003) ("Even when there is no due process violation, faulty or unreliable translations can undermine the evidence on which an adverse credibility determination is based."). We therefore remand to the Board of Immigration Appeals with instructions to hold a new hearing on the asylum and withholding issues raised by the petitioner.

PETITION GRANTED. REMANDED.